IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

CRL.A.No. 1463 of 2007()

CC.872/1994 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR
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APPELLANT: COMPLAINANT

C.H. YOUSAF, S/O. ABDUL KHADER,
CHAVASSERY, REP. BY POWER OF ATTORNEY
K.NASSAR, S/O. MOIDEEN, IRITTY, KANNUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: ACCUSED & STATE
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1. T. MUHAMMADALI, PADALATH HOUSE,
KUTTIPPURAM, MALAPPURAM DISTRICT.

2. STATE OF KERALA , REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 1463 of 2007

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Dated this the 16th day of August, 2007

JUDGMENT

In spite of coercive steps taken under sections 82 and 83 Cr.P.C., the 1st respondent had not appeared before the court below. The impugned order would show that the 1st respondent was acquitted on the sole ground of the absence of the petitioner. Hence, notice to the 1st respondent is dispensed with.

2. It is not discernible from the impugned order that the case was posted only for the evidence of the appellant and that the appellant had purposely absented from the court. As per the principles laid down by this Court in two decisions reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003), G.F.S. Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825) and a decision of the Apex Court reported in Associated Cements Co. Ltd. V. Keshwanand (1998(1) KLT 179 (S.C.), the impugned order is not sustainable. In Don Bosco V. Partech Computers Ltd. (Supra), this Court held that when the presence of the complainant was quite unnecessary and the Magistrate could proceed with the case by adjourning the same even if there was no representation from the counsel, the

Magistrate should have adjourned the case, particularly when steps under section 82 and 83 of the Cr.P.C. were pending against the accused. In G.F.S.Chits & Loans (P) Ltd. V. Rajesh (Supra) this Court held that the courts should also bear-in-mind that unmerited, thoughtless disposal gives wrong signal to the society, staking even public confidence in the system of administration of justice. In paragraph 17 of 1998(1) KLT 179 (Supra) the Apex Court held as follows:-

> "17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

3. Considering the above principles laid down by this Court as well as the Apex Court, this Court is of the view that the order under challenge is liable to be set aside and the matter has to be remitted to the trial court for fresh consideration. Ordered accordingly. The trial court is directed to proceed with the case from the stage at which the impugned order has been passed.

4. The appeal is allowed as above.

5. The appellant shall appear before the court below on 29th September,2007. On appearance of the appellant, the court below shall take fresh steps for the appearance of the 1st respndent as per the provisions of the Cr.P.C.

6. The records of the case shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

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K. Thankappan,J.

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Crl.A.No.

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Judgment
-7-2007